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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,128	08/08/2005	Max Rist	Neubauer 032594.050	2940

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EXAMINER

LOPEZ, AMADEUS SEBASTIAN

ART UNIT	PAPER NUMBER
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3771

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/525,128	<b>Applicant(s)</b> RIST, MAX	
	<b>Examiner</b> Amadeus S. Lopez	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/18/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The examiner has considered all references disclosed within the Information Disclosure Statement filed on.

### ***Specification***

3. The disclosure is objected to because of the following informalities:
  - a. In line 3 of paragraph 2, the word "patents" should be deleted and replaced with -- patients --.Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 1 and 2 recite the limitation "the in-and-out breathing zone" in line 2 of claim 1 and line 1 of claim 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4819629 to Jonson.**

7. **With regards to claim 1**, what is taught and shown by Jonson in figure 1 is a device for the control of direction of gas flows of a respirator (fig. 2 shows that device can be configured for use with a ventilator/respirator (14)); having an aerosol-producing atomizer (7) located in the in-and-out breathing zone of the respirator (as best understood, examiner has concluded that the location of atomizer is considered to be in the "in-and-out" breathing zone of respirator), and; having a bypass device (valves 12, 52, and 73) which guides the gas through the atomizer as it flows in one direction in order to carry with it aerosol (Col. 4, lines 5-56; "aerosol generator 7 is connected to a gas source via line 72 through valve 73 and when valve 73 is open, aerosol is conducted from the generator 7 to the inspiration line 51."); and which guides gas past the atomizer past the atomizer via a bypass as it flows in the other direction (During

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expiration, valve 12 is closed and exhaled gases are sent to the expiration line (61) and therefore guides gas past the atomizer (7) via a bypass as it flows in the other direction.

8. **With regards to claim 2**, what is taught and shown by is a device for the control of gas flow in atomizers in the in-and-out breathing zones of a respirator by means of a valve (valves 12, 52, and 73) that is time-controlled by the respirator (14 in figure 2; Col. 4, lines 5-56 wherein it is described by Jonson that the valves are controlled via control unit 8 which contains means which generate an opening signal to the valve 73 via line 82, after the expiration phase has begun; also stated that “this embodiment permits, after inhalation, the inhaled aerosol to be deposited with the greatest possible precision within that section or region of the airways from the mouth or nose to the alveolae needed for every application.”; therefore the device of Jonson is time-controlled by the respirator following the breathing cycle of the user), so that the dead-space volume does not receive aerosol.

### ***Conclusion***


9. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. US 6238030, US 2003/0140919, US 5687912, US5813401, US 6530370, and US 6725858.

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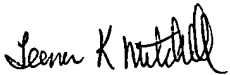
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amadeus S. Lopez whose telephone number is (571) 272-7937. The examiner can normally be reached on Mon-Fri 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Amadeus S Lopez  
Examiner  
Art Unit 3743  
September 28, 2006

ASL

  
**TEENA K. MITCHELL**  
**PRIMARY EXAMINER**